Preventing and combating trafficking in human beings and protecting its victims

2022/0426(COD) - 19/12/2022 - Legislative proposal

PURPOSE: to amend the anti-trafficking Directive (Directive 2011/36/EU) to better protect its victims.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Directive 2011/36/EU of the European Parliament and the Council constitutes the main Union legal instrument on preventing and combating trafficking in human beings and protecting the victims of this crime. That Directive sets out a comprehensive framework to address trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen prevention and protection of victims, taking into account the gender perspective.

CONTENT: the Commission proposes to amend the anti-trafficking Directive to improve the Member States' capability to fight trafficking in human beings more efficiently. The initiative will further harmonise the legal landscape addressing trafficking in human beings across the Member States. The new rules are expected to enhance cross-border cooperation, in terms of investigations and prosecutions, as well as victims' assistance and support.

The targeted amendments concern the following items:

Forced marriage as a form of exploitation

The Commission proposes to include forced marriage as a particular form of violence against women and girls and illegal adoption within the list of minimum forms of exploitation in the anti-trafficking Directive. This will better equip the legal systems of Member States, as well as its law enforcement and judicial authorities to effectively combat trafficking in human beings for the purpose of these two forms of exploitation.

Online dimension

All stakeholders, including law enforcement authorities, international organisations and civil society organisations are deeply concerned on the increasing number of offences committed or facilitated by means of information and communication technologies. The current provisions do not make any reference as to whether such elements are to be carried out online or offline in order to be criminalised and punished. Therefore, the Commission proposes to add a new article which explicitly mentions that the intentional acts and means, as well as exploitation should include acts committed by means of information and communication technologies. This will ensure that the online dimension of the crime is taken into account for every element of trafficking offences.

Sanctions

The Commission considers that it is crucial to enhance action against legal persons in the interest of which trafficking offences are committed. The adoption of a mandatory regime strengthens the criminal justice aspect of the response.

Therefore, the Commission proposes to amend the Directive by establishing that, instead of the **list of optional sanctions**, the effective, proportionate and dissuasive sanction will, if appropriate, include the exclusion from entitlement to public benefits, aid or subsidies; and the temporary or permanent closure of establishments which have been used for committing the offence. This is the regime that applies when legal persons are held liable for a standard trafficking offence. The addition of subsidies complements and expands the current optional list of sanctions, with a view to preventing that legal persons convicted for trafficking offences receive such forms of public assistance.

Referral mechanisms

Substantial room for improvement remains in the early identification and referral practices of Member States, both at the national and cross-border levels. In particular, not all Member States have a national referral mechanism in place and the structure and functioning of such mechanisms varies considerably across Member States.

This proposal seeks to ensure that all Member States establish by laws, regulations or administrative provisions national referral mechanisms, with a view to streamlining the functioning of relevant national institutions and to bringing further harmonisation in their structures and practices on referral to victims to appropriate assistance and support systems. This will also constitute the first step towards the establishment of a European Referral Mechanism.

Use of services which are the object of exploitation with knowledge that the person is a victim of trafficking

In order to reduce the demand for services that foster all forms of exploitation, the proposal establishes as a criminal offence the use of services which are the object of exploitation with the knowledge that the person is a victim of a trafficking offence (i.e. the knowing use of exploited services). This measure aims to discourage demand.

Reporting

The proposal introduces a requirement for the Commission to submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with the new rules on the knowing use of exploited services, as well as on the impact of such measures. The report should be submitted by five years after the transposition deadline. This will ensure adequate assessment and reporting on the measures proposed by the Commission after an adequate time span that allows the possibility to analyse the transposition and impact of the new rules.

Data collection

An EU-level data collection on the progress made in the fight against trafficking in human beings is carried out every two years. An evaluation of the Directive, however, showed that there are still important gaps in the data collection, particularly on criminal justice indicators and on offences concerning the use of exploited services, and that the publication of relevant statistics often arrives substantially after the end of the reporting period (usually around two years).

Therefore, the Commission proposes to introduce a requirement for Member States to collect and report data on trafficking in human beings to the Commission **every year**. A minimum set of indicators is

specified such as the number of registered victims; number of persons suspected, prosecuted and convicted for offences and the level of disaggregation.